IN THE

Supreme Court of the United States

October Term, 1955

No. 82

INTERNATIONAL HARVESTER CREDIT CORPORATION, ET AL.,
Appellants,

v.

ALLEN J. GOODRICH, ET AL., *Appellees.*

REPLY BRIEF FOR APPELLANTS

ARGUMENT

1. Appellees' primary argument is that appellants' interest in the three tractors should be termed "a security device". So characterized, appellees assert that as a matter of priority appellants' property in the tractors may be taken for the protection of state revenue. To appellants, however, the distinction between a security device and a property interest is a distinction without a difference.

Whatever may be the form of words employed, it cannot be denied that prior to repossession, appel-

lants' equity in the tractors amounted to approximately five thousand dollars. Nor can it be gainsaid that appellants have taken every legal and proper step available to them to protect their property rights. The tractors were physically repossessed by appellants more than a month before the time appellees asserted the liens and fixed their amount. There is not the slightest question that at every earlier stage appellants acted in good faith, complying exactly with every applicable New York law. They had given notice of their ownership by filing their vendor's conditional sales contracts as directed by statute. It is not denied that they later legally repossessed their tractors in accordance with their contract rights. Appellants could have done nothing more.

Semantics aside, the question which is presented on this appeal is whether the State may subject appellants' tractors to confiscation to satisfy not only taxes, but interest and even penalties which have no relation to either appellants or their property and for which they are not, and never were, personally liable.[1] We use the word "confiscation" advisedly, because, as the Court will recognize, appellants' rights against Eastern were extinguished on repossession of the tractors, and they have in consequence no possible remedy against anyone else by which they might recover the value of their property interest which the State has seized.

There is, of course, the additional issue, upon which appellants also rely: that because of looseness in draftsmanship both the statute itself, and the Regulations issued under it, are fatally defective in that they fail

[1] Opinion of Attorney General of New York, June 15, 1954.

to make any provision for the protection of the property rights of conditional vendors such as appellants. So far as concerns a carrier-taxpayer, the statute and Regulations require appellees to give the carrier-taxpayer notice of the assessment of the tax, notice of the seizure of his property, and ten days' notice of any intended public sale. In addition, the Regulations grant the carrier-taxpayer the right to a hearing, and the statute expressly provides for the remedy of court review.[2] In contrast, none of these protective rights was available to the appellants in this case.

2. The arbitrary action of the State officials is compounded by the secrecy which the State decreed should surround both the fact and the amount of any tax delinquencies under this statute. Recognizing no doubt that this secrecy is a fatal objection to its claim, the State now asserts here, for the first time, that "nothing in either the law or the record in this case indicates that the fact and the amount of an existing tax liability would not have been disclosed to conditional vendors upon inquiry to the proper state officials." (Brief, p. 26).

This statement of appellees is beyond comprehension in the light of the secrecy provisions of Section 514 of Article 21 of the New York State Tax Law[3] which, as above stated, in terms forbade the disclosure of any information concerning tax delinquency under the Highway Use Tax, and indeed made it a misdemeanor to divulge or make known in any manner any

[2] See Appendix A, containing the relevant sections of the statute and the regulations.

[3] For the full text of Section 514, see Appendix B.

information with respect to the Highway Tax returns.[1] Absent a crime on the part of a tax commission official, it is difficult to see how appellants could have had notice of Eastern's tax delinquency. Implied notice has never been held to include the surreptitious and illegal securing of information.

Appellees throughout their brief place reliance upon the doctrine of imputed knowledge. That is, they assert that appellants must be held to have had knowledge of the existence of the statute and of the taxes levied thereunder against the carrier. But in this case the only knowledge which could be imputed to appellants is the fact that there was a state statute under which it was possible that the carrier-taxpayer might or might not pay taxes assessed against it. In this particular case this doctrine goes no further. The answer to appellees lies in the fact that by affirmative action the Legislature, in the secrecy provisions of Article 21 prevented the appellants from securing any of the pertinent information necessary for the protection of their property rights. In short, it is the application of the secrecy provisions which gives to this case one of its most singular features.

3. Appellees, in further elaboration of their contention that the case should turn on the characterization of appellants' property right as a "security device", assert (Brief, p. 25) that the gravamen of appellants' claim is that the State of New York has no power to restrict the manner of conducting credit transactions. The Court, however, will have noted that

[1] On March 25, 1955, after the entry of the final judgment in this case by the New York Court of Appeals, the New York Legislature amended Section 514 by adding a sentence which authorized the publication of the names of delinquent taxpayers by the State Tax Commission. Obviously, this amendment has no relevance to this case.

appellants concede the power of the State of New York appropriately to deal with credit transactions. There is little doubt that upon proper legislative findings, the State of New York could curtail credit transactions throughout the State. However that may be, what is at issue here is the taking, without notice or hearing, of one person's property to pay the unrelated taxes of another.

Indeed, appellees are forced to carry this contention to the extreme in asserting that what has been done must be valid because the lien provisions of the Highway Use Tax may be regarded as an amendment of the Conditional Sales Act Law. Appellees fail to note, however, that so regarded, appellants have been subjected to the liabilities of a delinquent taxpayer but, as already pointed out, they have been denied the rights to notice, hearing and ultimate judicial review which Article 21 of the Tax Law accords to delinquent taxpayers. As already pointed out, not only has appellants' property been taken, but appellants are left without a single remedy.

4. Appellees also make much of the point that had New York adopted a gross receipts tax instead of a Highway Use Tax, the lien in question could not have been broken down and attributed to separate motor vehicles employed by the carrier. The short answer to this argument is that New York did enact a use tax rather than a receipts tax. Having done so, appellees cannot be heard to argue that appellants' property has not been taken without notice and hearing simply because another type of legislation might have been enacted. Appellees must defend what they have done, not what they might have done.

5. Finally, appellees argue what appellants do not contest, that the Highway Use Tax itself is a valid

tax. The issue here is the attempted application of the lien provisions which result in the imposition of the Highway Use Tax on those who do not use the highways, and who are not subject to the tax. To the extent that appellants' property has been used on the highways there is no contest. However, when appellants are forced to pay for the highway use of other tractors by the carrier simply because appellees assert that what other states have done—apportioning the lien to the mileage use of the several tractors—would be inconvenient for New York the issue is drawn and the contest is clear.

In this connection it is significant that the Commission's Regulations required taxpayer-carriers to keep separate records of daily mileage use for each separate tractor.[5] Such records were in effect required by the provisions of the statute which base the tax "upon the gross weight of each vehicular unit and the number of miles it is operated on the public highways". Nothing in the statute required the imposition of a blanket lien on the three tractors of appellants for all the taxes, interests and penalties due for all the vehicles used by the taxpayer on the public highways of New York.

Respectfully submitted.

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[5] See Appendix C, containing Regulations 21, Art. 100 "Required Records".

APPENDIX A

The Truck Mileage Tax

Regulations 21 (1953)

Art. 118. Revision of Returns. (Law § 510).

If in the opinion of the State Tax Commission the return of any taxpayer is insufficient or incorrect, the Tax Commission by written notice to the taxpayer may require the filing of a corrected return within twenty days from the date the notice was mailed.

If the taxpayer fails to file a corrected return within the time required, or fails to file any return, the State Tax Commission is authorized to make a determination of the tax, from any information available. The Commission may examine the books and records of the carrier, take testimony and require proof, material for its information for the purpose of determining the tax.

The State Tax Commission may make such determination of tax within five years after a return has been filed, or at any time if no return has been filed.

After notice of the determination of tax is given the taxpayer, the determination becomes final, unless the taxpayer requests a hearing at which time he may submit such further information as he deems advisable. The application for a hearing must be made in writing and must be made within thirty days from the mailing of the determination of tax. After the hearing, the State Tax Commission will notify the taxpayer, in writing, of its decision.

Art. 119. Judicial Review. (Law § 510)

At any time within thirty days after service of notice of the decision of the State Tax Commission and upon depositing or securing the amount of tax and penalty due with the Commission, and securing the costs and charges of the proceeding, the taxpayer may institute a proceeding in the Supreme Court of the State of New York under Article 78 of the Civil Practice Act to review such determination. This remedy is the exclusive remedy available to any taxpayer to secure a judicial determination of his liability for taxes under Article 21 of the Tax Law.

§ 314. Secrecy of Returns

1. Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, any officer or employee of the department of taxation and finance, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, to divulge or make known in any manner the contents or any other information relating to the business of a carrier or other person contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the department of taxation and finance, the department of public service or the tax commission in an action or proceeding under the provisions of this chapter, the vehicle and traffic law or the public service law, on behalf of any party to any action or proceeding under the provisions of this article or the vehicle and traffic law or the public service law when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or on behalf of officers to whom information shall have been supplied as provided in subdivision two of this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the tax commission, in its discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the department of public service; or by or to the attorney general or other legal representatives of the state when an action shall have been commenced pursuant to the provisions of this chapter, the vehicle and traffic law or the public service law in which such returns or reports or the facts shown thereby are directly involved; or

the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by any person under this article; nor to prohibit the delivery to any person, or a duly authorized representative of such person of a certified copy of any return or report filed by such person pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof. Returns and reports shall be preserved for five years, and thereafter until the tax commission orders them to be destroyed.

g. The tax commission, in its discretion and pursuant to such rules and regulations as it may adopt, may permit the commissioner of internal revenue of the United States, or the appropriate officers of any other state which imposes a similar highway use tax, or the duly authorized representatives of such commissioner or of any such officers, to inspect returns or reports made pursuant to this article, or may furnish to such commissioner or other officers, or duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply such commissioner or any such officers or such representatives with information relating to the business of any person making returns or reports hereunder. The tax commission may refuse to supply information pursuant to this subdivision to the commissioner of internal revenue of the United States or to the officers of any other state if the statutes of the United States, or of the state represented by such officers, do not grant substantially similar privileges to the tax commission of this state, but such refusal shall not be mandatory. Information shall not be supplied to the commissioner of internal revenue of the United States or the appropriate officers of any other state which imposes a similar highway use tax, or the duly authorized representatives of such commissioner or of any of such officers, unless such commissioner, officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the

same restrictions as those hereby imposed upon such commissioner, officer or other representatives.

3. Any offense against subdivisions one or two of this section shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court and if the offender be an officer or employee of the state, he shall be dismissed from office and be barred from holding any public office in this office for a period of five years thereafter. Added L. 1951, c. 74, § 2; amended L. 1954, c. 128, § 2, eff. March 15, 1954.

APPENDIX C

The Truck Mileage Tax

Regulations 21 (1953)

Art. 100. Required Records. (Law § 507)

Every carrier who operates a motor vehicle in this State, which is subject to the tax under Article 21, must maintain an accurate daily record of all operations of such vehicle in this State.

This daily record of operations shall be in the form of a manifest or trip record. The record must contain the following information:

1. The date of each trip.
2. The permit and vehicle numbers.
3. The point of origin and destination for each trip.
4. The number of round trips each day.
5. The number of miles travelled laden.
6. The number of miles travelled empty.
7. The name of the owner if operating a leased or interchanged vehicle.

The daily manifest or trip record shall show each trip for the day. If the daily manifest is used to record the operations of more than one vehicle, a monthly summary shall be prepared for each vehicle or vehicular unit at the end of each month.

* * *

In addition, speedometer readings, fuel consumption records, maps, mileage or tariff schedules or record of mileage used for billing purposes and used to compute the taxable mileage shall be kept available. The mileage shown in the daily manifest or trip records for each vehicle shall be totaled at the end of each month and entered on the monthly tax return. (Form TMT-3).